



*In the Matter of*

The Effect of Foreign Mobile Termination Rates on U.S. Customers

IB Docket No. 04-398

## **COMMENTS OF GSM EUROPE**

### **A REGIONAL INTEREST GROUP OF THE GSM ASSOCIATION**

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## **GSM Europe Response to FCC Investigation into the Effect of Foreign Mobile Termination Rates on U.S. Customers**

### **Summary of Comments**

- As a general principle, GSM Europe (GSME) believes national authorities are in the best position to analyse and determine the need for regulation in their own markets. We therefore believe the FCC should look to national regulators in overseas markets to address the issues raised in the NOI.
- GSM Europe (GSME) believes that a comprehensive and effective regulatory regime exists in Europe to ensure that consumers are not paying rates that are “unreasonably high or discriminatory due to the exercise of market power.”
- GSME submits that as a result of regulatory action mobile termination charges have continued to fall in Europe. They have on average<sup>1</sup> fallen by 33% from 2001 to 2004 for operators assessed as having Significant Market Power and are continuing to fall.
- GSME would like to advise the FCC against approaching the issue of mobile call termination in a unilateral way. There are a significant number of parties involved in the end to end delivery of international calls and it is inappropriate and ultimately ineffective to focus on one of those parties (mobile operators). Any unilateral extra territorial measures apart from being unjustified would be impossible to target and not have the intended effect. In the European Union, National Regulatory Authorities have already taken or are in the process of taking tough measures on mobile call termination prices.
- GSM Europe is not aware of any evidence that US customers (as opposed to US Carriers) do not recognise the value of contacting individuals directly on their mobile phones. If this were a problem then it is likely that in most cases a fixed alternative would be available, if they wished to make use of it. The FCC should focus its analysis on the US market to understand if there is a root problem there before attempting to override the actions of National

<sup>1</sup> EU 10<sup>th</sup> Implementation Report, Annex 1 page 64



Regulatory Authorities in the EU who are already competently addressing Mobile Call Termination.

- As far as US consumers are concerned it would be relevant to investigate if US carriers track their retail prices to the real (declining) costs of the calls in question. The FCC has failed to accurately identify the point in the supply chain where there may be a competition failure – it is not clear that what the US carriers are being charged and what they are charging their customers is principally driven by call termination charges.



## **Introduction**

GSME<sup>2</sup> would like to take the opportunity to comment on the notice of Inquiry into The Effect of Foreign Mobile Termination Rates on U.S. customers. GSME were one of the commenters on the ISP Reform proceeding and wish to update and add to the positions of European Mobile Operators stated in that document. The GSM Association are also submitting comments which cover a broad range of arguments from GSM operators globally; these comments are focussed on the specifics of the European regulatory environment.

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<sup>2</sup> GSME is the European Regional Interest Group of the GSM Association



## **1 Presence of specific national regulatory framework**

As a general principle, GSME believes national authorities are in the best position to analyse and determine the need for regulation in their own markets. We therefore believe the FCC should look to national regulators in overseas markets to ensure that foreign mobile termination rates are reasonable.

As GSME indicates in its former comments, every State has established a specific regulatory framework concerning the telecommunications market in order to comply with international commitments. Furthermore, Member States in the EU all have established competition law regimes and are all required to comply with detailed Directives concerning regulation of communications services.

In the absence of clear discrimination against US users, GSME believes the FCC should accept that the interests of US consumers are adequately protected by the on-going enforcement of the existing rules in place in the EU. We are therefore, surprised by the implication in the FCC's Notice of Inquiry that the monitoring and control of these national markets is in some way inadequate. GSME wishes to underline that in Europe, there is a very specific electronic communications regulatory framework, establishing a strict procedure for adequate market analysis and guaranteeing the appropriateness of any measures that may be adopted, if there is shown to be a material and continuing failure in a market. In view of these safeguards, there is no reason for the FCC to attempt to intervene in this area.

## **2 Recent Changes in the regulatory environment in the European Union**

The EU has recently adopted a new regulatory framework for the electronic communications market whose goal is to increase competition to the benefit of users. The new package of regulations<sup>3</sup> that was required to be implemented in the Member States by 24 July 2003 defines processes that National Regulatory Authorities (NRAs) must follow. This includes market analysis methodology and where necessary the application of appropriate remedies in the event of market failure. This ensures that NRAs have the freedom to choose the most appropriate measures to

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[http://europa.eu.int/information\\_society/topics/ecommm/all\\_about/todays\\_framework/market\\_access/index\\_en.htm](http://europa.eu.int/information_society/topics/ecommm/all_about/todays_framework/market_access/index_en.htm)



address the problem found, as they have direct access to the relevant data (including commercially confidential data) on the market in question.

As part of this process operators are required to supply NRAs with information (both confidential and non confidential) to enable the market analysis to be carried out. This information is required to enable a rigorous market analysis to be carried out, which usually involves the creation of detailed cost models, using the data obtained. A public consultation is also normally part of this process to ensure transparency. It is difficult to believe that an external body, without access to commercially sensitive information would be in a better position than an NRA to assess the market and the subsequent impact of any intervention.

The European Commission has also provided specific guidelines<sup>4</sup> on the analysis and selection of remedies designed to address possible abuse of dominance should this arise in the identified markets including the specific market for call termination on individual mobile networks. This is to ensure a consistent approach in each Member State of the EU.

When a persistent market failure is established and the application of competition law is not thought adequate to solve the problem, the NRA must designate an undertaking(s) with Significant Market Power (SMP) in the relevant market. The NRA can then impose appropriate, proportionate and adequate remedies on the operator(s). These should be for the minimum period of time necessary to remedy the problem.

Furthermore, all the European NRAs are working closely together, namely through the ERG<sup>5</sup> (European Regulators Group) and IRG (Independent Regulators Group) in order to study and consider which are the most adequate remedies to address market failures. Mobile call termination has been one of the aspects studied by the ERG and IRG during 2004 and remains a priority issue identified as such in their 2005<sup>6</sup> work programme, which is currently subject to consultation.

Thus, there is a strong and comprehensive regulatory framework in Europe which is being applied to the specific mobile termination market.

<sup>4</sup> [http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c\\_165/c\\_16520020711en00060031.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c_165/c_16520020711en00060031.pdf)

<sup>5</sup> <http://erg.eu.int/>

<sup>6</sup> [http://erg.eu.int/doc/publications/public\\_hearing\\_wp2005/draft\\_wp\\_2005.pdf](http://erg.eu.int/doc/publications/public_hearing_wp2005/draft_wp_2005.pdf)



Ultimately, in the absence of access to relevant data and in view of complexity of the issues, together with the extent to which the relevant factors are clearly market specific, GSME believes the FCC is not well placed to attempt to duplicate the work currently being carried out by European regulators. In particular, we see very little value in assessments based on studies designed for other markets or international benchmarking. We therefore submit that the FCC is not in a position to meaningfully evaluate data on European mobile termination rates currently available in the public domain or determine whether these rates are too high.

### **3 Price trends in Mobile Termination in Europe**

Prices for mobile services have continuously fallen over the past few years, due to the efficiency of mobile operators and to the effects of competition. This is also true for mobile termination rates in Europe and is referred to in the 10<sup>th</sup> EC Report<sup>7</sup> on “European Electronic Communications Regulation and Markets”:

*“...There has been a welcome reduction in mobile termination rates in many EU countries during the year....”<sup>8</sup>*

In some countries this has been without direct regulatory intervention for example in Ireland, Denmark and Germany, indicating that regulation is not the unique driver of price declines. In other European countries where the national regulator has examined mobile termination rates this has usually resulted in regulatory measures and in price decreases, referred to in the EC 10<sup>th</sup> Report:

*“...In response to regulatory intervention there has been a welcome downward trend in these rates over the last year. The average fixed-to- mobile termination rate for SMP operators in the EU 15 fell by 14% between July 2003 and July 2004...”<sup>9</sup>*

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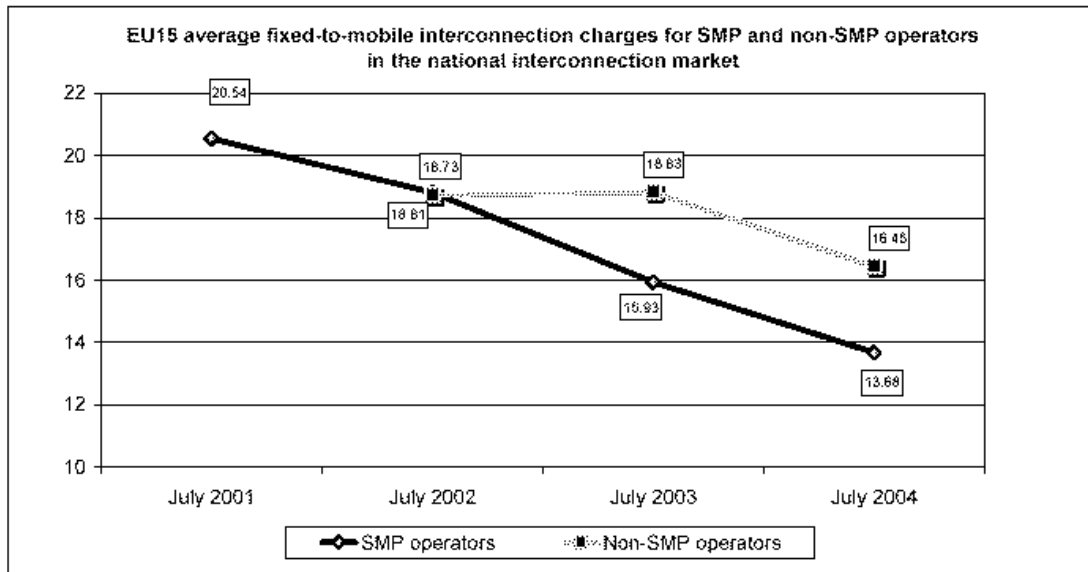
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[http://europa.eu.int/information\\_society/topics/ecomms/all\\_about/implementation\\_enforcement/annualreports/10threport/index\\_en.htm](http://europa.eu.int/information_society/topics/ecomms/all_about/implementation_enforcement/annualreports/10threport/index_en.htm)

<sup>8</sup> See page 4 EC 10th Implementation Report.

<sup>9</sup> See page 9 EC 10th Implementation Report.

This clear decrease in price mobile termination has been real for SMP operators (14%) but also for non-SMP operators (13%) who are not subject to regulatory intervention, as shown in the following chart<sup>10</sup>:



Source: Commission services based on NRA data

Looking forward the Commission report also states that “further reductions will undoubtedly follow from interventions by NRAs”. “Several NRAs, including those of France, Portugal and the UK have already announced price caps for future years which will require further substantial reductions in rates in 2005 and 2006.” Against this background reducing prices it is clearly inappropriate for the FCC to attempt to intervene on this matter.

#### **4 Lack of evidence of a root problem**

GSME has seen no evidence that mobile operators charge discriminatory termination rates to US customers. In the absence of such discrimination, GSME believes the FCC should accept that the interests of US consumers are already adequately protected through the application of the EU’s competition law regime and sector specific regulatory framework. GSME believes that the FCC should first analyse in detail the US market to understand whether there is a real problem for US customers before attempting any possible action regarding other foreign countries’ markets.

<sup>10</sup> See page 37 Annex 3 “market overview” EC 10th Report.





At first sight, it seems that the FCC is assuming without any analysis that foreign mobile prices are too high and will remain so. However, it has to be said that the FCC has not taken into account the different charges existing on peak-time and off-peak time in Europe, taking as a reference the most expensive ones, which could distort its former analysis and its conclusions.

GSME also believes it would be relevant to investigate if US carriers track their retail prices to the real costs of the calls in question. We query whether US carriers are correctly passing on the continuing decrease in wholesale European mobile termination prices to their final users, as there is no information on this issue in the FCC paper. The level of transparency and the level of information provided to users by US carriers is clearly also relevant in this context. We believe it is the responsibility of US carriers to provide adequate information to their customers, given that overseas mobile operators have no direct relationship with the caller.

After having carefully studied the FCC paper, GSME considers that no real evidence is produced that foreign mobile termination rates are perceived to be a problem for US users. In fact the FCC paper does not cite a single complaint from US users associations or similar organisations.

## **5 Conclusion**

Mobile call termination rates between 2001 and 2004 have on average fallen by 33% for operators assessed as having Significant Market Power. Between July 2003 and July 2004 the decrease in the price of mobile termination has been 14% for SMP operators and 13% for non-SMP operators.

The comprehensive regulatory regime that is in place in the EU can and does competently address the specific issue of mobile call termination. It does this through a process that involves detailed market analysis and identification of appropriate remedies. To support this process the NRAs have legal powers to obtain the relevant information, including commercially confidential data from operators. There are also mechanisms that ensure that a consistent approach is taken across the Member States. These processes, together with the continuing impact of competition in the EU, mean that there is no basis, legal or otherwise, for extra territorial intervention in the matter of mobile call termination.